MARATHAEI SANGUPULLAI & ANOR

v.

SYARIKAT JG CONTAINERS (M) SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL KADIR SULAIMAN J
[ORIGINATING MOTION NO: R1-25-111-93]
28 JULY 1998

LABOUR LAW: *Industrial Court - Employee's right to legal representation - Whether may be represented by advocate and solicitor in proceedings under s. 56 Industrial Relations Act 1967 for non-compliance of award - Whether may be so represented only in proceedings under s. 20(3) Industrial Relations Act 1967 for unjust dismissal - Industrial Relations Act 1967, s. 27(1)(d)*

The instant application turned upon the proper construction of s. 27(1)(d) of the Industrial Relations Act 1967 ('the Act'). The issue was whether a workman may be represented by an advocate and solicitor only in proceedings brought before the Industrial Court under s. 20(3) of the Act for unjust dismissal. In other words, the issue was whether a workman may not be represented by an advocate and solicitor in proceedings brought before the Industrial Court under any other provision of the Act.

Held:

[1] Section 27 of the Act is a provision which regulates the appearance and representation at proceedings before the Industrial Court. Proceedings under s. 20(3) of the Act for unjust dismissal and under s. 56 of the Act for non-compliance with the terms of any award are proceedings envisaged by s. 27 of the Act. Since the section covers all proceedings, s. 27(1)(c) and (d) state the position of a workman in proceedings before the Industrial Court. The words "(in proceedings under s. 20(3))" appearing in subs. (1)(c) and (d) clearly define the right given to the workman with regards his appearance and representation at such proceedings before the Industrial Court.

[1a] A workman may be involved in other proceedings not related to s. 20(3) of the Act but when he is involved in proceedings relating to s. 20(3), by s. 27(1)(c) of the Act, he may appear personally or where he is a member of a trade union of workmen, he may be represented by an officer or employee of the trade union of which he is a member. By s. 27(1)(d) of the Act, in such proceedings, he may be represented by an advocate only with the permission of the president or the chairman.

[1b] The issue before the Industrial Court in the instant case concerned the workman's appearance in a proceeding under s. 56 of the Act and thus s. 27(1)(c) and (d) is not applicable. Therefore, a counsel has no *locus standi* to represent a workman in a non-compliance case under s. 56(1) of the Act.

[Application dismissed.]

Case(s) referred to:

Cellular Communcations Network (M) Sdn Bhd v. Steven Phua Siaw Yong [1997] 1 ILR 845 ***(refd)***

Doresamy v. Public Services Commission [1971] 2 MLJ 127 ***(dist)***

Federal Hotel Sdn Bhd v. National Union of Hotel, Bar & Restaurant Workers [1983] 1 MLJ 175 ***(dist)***

Pustaka Delta Pelajaran Sdn Bhd v. Looi Beng Chong [1997] 1 ILR 620 ***(refd)***

Rama Chandran v. The Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 20(3), 26, 27(1)(c), (d), 56(1)

Rules of the High Court 1980, O. 15 r. 6

Other source(s) referred to:

Staturory Interpretation, Donald Gifford, p 3

For the applicants - Sivarasa Rasiah; M/s Daim & Gamany

For the first respondent - Anthony Gomez; M/s Gomez & Assocs

Reported by S Dharmendran

JUDGMENT

The first applicant is the mother of a deceased workman, Thangayah Aupulley and the second applicant is the administrator of the estate of the deceased workman. The second applicant was joined as a party pursuant to O. 15 r. 6 of the Rules of the High Court 1980 in accordance with the order of court of 10 October 1997.

The deceased workman was dismissed from his employment with the first respondent on 21 May 1986. His representation for reinstatement on account of the alleged dismissal without just cause or excuse, was referred to the Industrial Court by the Minister under s. 20(3) of the Industrial Relations Act 1967 (hereinafter referred to as "the 1967 Act"). By Award No. 76 of 1989 handed down on 22 July 1989, the Industrial Court held that the dismissal was without just cause or excuse and in lieu of reinstatement, the first respondent was ordered to pay compensation amounting to RM6,852 and also sick leave pay and back-wages, which in all came to a total sum of

RM15,592.10. It was ordered that this sum be paid to the workman within one month of the date of the award. Subsequently, on 6 July 1970, the workman lodged a complaint under s. 56 of the 1967 Act with the Industrial Court of non-compliance by the first respondent of the term of the award to the extent of RM5,592.10 as he was paid only a sum of RM10,000. At the hearing of this complaint by the workman, he was represented by Encik Munjit Singh Gill of the Malaysian Trade Union Congress or in short the MTUC. The first respondent was represented by an officer from the MEF, a trade union of employers of which the first respondent is a member. The first respondent raised a preliminary objection that the workman could not be represented by an official of the MTUC. Hence Encik Munjit Singh had no *locus standi* to represent the workman. Only the workman himself or his union had the standing as so stipulated in s. 27 of the 1967 Act.

On this issue, the learned president of the Industrial Court handed down Award No. 73 of 1991 on 1 March 1991 upholding the said preliminary objection of the first respondent and directed that the workman will have to appear in person himself to present his complaint of non-compliance of Award No. 76 of 1989 by the first respondent on a date to be fixed. Following the decision in the award, the workman engaged an advocate, Encik Sivarasa Rasiah, to handle the matter of non-compliance with Award No. 76 of 1989 on his behalf. The matter came up for disposal before the Industrial Court on 9 July 1991. During these proceedings the first respondent was again represented by an officer from the MEF. The first respondent again raised a similar objection but this time, that Encik Sivarasa Rasiah, as an advocate, had no *locus standi* to represent the workman in the proceedings for non-compliance with the terms of the award under s. 56 of the 1967 Act. Before the Industrial Court it was argued that since the employer is allowed to be represented by its trade union, Parliament could not have intended to discriminate the workman in producing an unjust, unreasonable and illogical result. The learned President of the Industrial Court, however, upheld the said preliminary objection by the first respondent and handed down on 31 July 1993, Award No. 238 of 1993 holding that a counsel has no *locus standi* to represent a workman in a non-compliance proceedings under s. 56(1) of the 1967 Act.

In the meanwhile, on 16 May 1993 the workman died. Pending the grant of the letters of administration of his estate, on 11 September 1993, his mother, the first applicant, filed an *ex parte* application for leave to apply for an order of *certiorari* to quash this latest award of 31 July 1993 and for an order of mandamus directing the Industrial Court to allow the first applicant to be represented by an advocate in the non-compliance proceedings before it. Leave was granted on 7 October 1993 and on 14 October 1993 the first applicant filed this motion for orders of *certiorari* and mandamus relating to Award No. 238 of 1993 (hereinafter referred to as "the impugned award").

The ground on which the relief is sought is simply that the Industrial Court committed an error of law by misinterpreting s. 27(1)(d) of the 1967 Act in holding that the advocate has no *locus standi* to represent the first applicant in proceedings for non-compliance of the term of Award No. 76 of 1989 handed down on 22 July 1989 under s. 56 of the Act. On 4 July 1995 the first respondent filed an affidavit in reply to the affidavit in support of the first applicant of 10 September 1993. This affidavit in reply of the first respondent was affirmed by Sudheer Sharma a/l S Sharma, its manager cum director, on 4 July 1995. The deponent denied the contention of the applicants but instead of adducing evidence concerning the issue of the *locus standi* of the advocate to represent the applicants, he questioned in his affidavit, the *locus standi* of the first applicant herself to represent the deceased workman having no letters of administration of the estate of the deceased.

On 29 October 1996 this motion of the first applicant came up for disposal. On that day the counsel for the first applicant applied for an adjournment pending the grant of the letters of administration in respect of the deceased workman, in the light of the matter of *locus standi* of the first applicant being questioned by the first respondent.

On 9 July 1997 the second applicant was granted the letters of administration in respect of the estate of the deceased workman and upon application made before the learned senior assistant registrar with no objection from the first respondent, on 10 October 1997 he was added in as a party to the proceedings. Hence the two applicants in the matter. The first respondent did not file any affidavit to oppose this motion of the applicants seeking for the two orders in connection with the impugned award.

The issue before the Industrial Court when hearing the complaint of the deceased workman on the alleged non-compliance with the terms of Award No. 76 of 1989 handed down by it on 22 July 1989 was whether a workman is entitled to legal representation. Section 27 of the 1967 Act concerns the appearance and representation at proceedings before it. Proceedings in respect of non-compliance with the terms of any award is such a proceedings before it. Section 27 of the 1967 Act states:

> 27. (1) In any proceedings before the Court a party may -
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> (a) where the party is a trade union, be represented by an officer or employee of the trade union;
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> (b) where the party is an employer, appear himself personally or be represented by his duly authorized employee, or by an officer or employee of a trade union of employers of which he is a member;

(c) where the party is a workman (in proceedings under section 20(3)), appear himself personally or where he is a member of the trade union of workmen, be represented by an officer or employee of the trade union;

(d) where the party is a trade union, or an employer, or a workman (in proceedings under section 20(3)), be represented with the permission of the President or the Chairman, by an advocate, or, notwithstanding anything to the contrary contained in any written law relating to the registration of trade unions, by any official of an organisation (not being a trade union) of employers or of workmen, as the case may be, registered in Malaysia.

(2) If any question arises before the Court as to whether the person representing a party under subsection (1) is -

(a) an officer or employee of the trade union which he represents;

(b) a duly authorized employee of the employer whom he represents; or

(c) an official of a registered organisation mentioned in subsection (1)(d),

the question shall be determined by the President or the Chairman, whose decision thereon shall be final.

At p. 4 of the impugned award, exhibited as "MS-6" to the affidavit in support of the motion, the learned president said:

> But section 27(1)(d) of the Act is explicitly clear. It does not admit of two constructions. Where the language of the Section is manifestly clear and unequivocal, it has to be construed as it stands, according to its plain grammatical sense without addition or deletion of any words and without doing violence to the language used by the legislature. To stretch or strain the unambiguous language of the statute in order to give effect to the appearance of Counsel in a case of non-compliance, would be doing an impermissible violence to the language of the statute. There is a gap disclosed here and the remedy lies in an amending Act, otherwise the Court is accused of usurping the legislative function under the thin guise of interpretation.
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> For the reasons given above, we hold that a Counsel has no locus standi to represent a Claimant in a non-compliance case under Section 56(1) of the Act.

Before the Industrial Court and before me now the learned counsel for the applicants submits that by disallowing legal representation in proceedings under s. 56 of the 1967 Act, there is an anomaly in the law for whilst in proceedings under s. 20(3) of the Act, legal representations are allowed on behalf of the workman, but when the aid of the court is sought under s. 56 by the same workman to effect compliance with the award handed down in pursuance to a proceedings under s. 20(3), he is deprived of the representation. He says that it could not be the intention of the legislature to create such an

incongruous and illogical result. He however, concedes that only where there are clear words in the statute would the court have no option but to accept an obviously anomalous provision on the basis that that was in fact the intention of Parliament and that the literal meaning of the words are too clear. He says the words "(in proceedings under s. 20(3))" appearing in s. 27(1)(c) and (d) are only there to indicate that individual workmen can only begin proceedings in the Industrial Court via s. 20(3) as opposed to the other main mode wherein the dispute is between an employer and a trade union representing workmen and the reference to the Industrial Court is through the process of s. 26. In the circumstances, it is not the intention of s. 27 of the 1967 Act to exclude legal representation for a workman. The fact that the Act is silent on the right to legal representation to a workman is not adequate to deprive a workman of such right. He cited various authorities in support which I will deal with later. It is his further submission that the deprivation of the right of representation to a workman would lead to an absurd result when an employer is all through allowed representation by an officer or employee of a trade union of employers of which he is a member.

For the first respondent, it is submitted that the words "(in proceedings under s. 20(3))" appearing in s. 27 are exclusive to that proceedings only and cannot include a proceedings under s. 56 for non-compliance with the terms of an award. To obtain an award under s. 20(3) which subsequently may lead to a proceedings under s. 56, a workman may have to rely on representation either by his union or by his solicitors to prosecute the matter in hand. However, as soon as an award under s. 20(3) has been made by the Industrial Court and subsequently if that award is not complied with by his employer, all the workman needs to do is just to lodge a written complaint to the court to that effect as provided for by s. 56(1) of the 1967 Act. In other words, the workman/complainant merely informs the court that the other party has failed to comply with the terms of the award. There is no legal issues involved which requires a legal representation. It is submitted that the legislature in its wisdom based on equity and good conscience would not want the aggrieved complainant to be further jeopardised by unnecessary legal costs and expenditure and therefore, made the procedure in the case of non-compliance with the terms of an award so simple than any aggrieved complainant under s. 56 could seek justice and fairness from the system.

I am inclined to agree with the submissions by the learned counsel for the first respondent. As stated earlier, s. 27 is a provision which regulates the appearance and representation at proceedings before the Industrial Court. Proceedings under s. 20(3) for unlawful dismissal and under s. 56 for non-compliance with the term of any award are such proceedings envisaged by s. 27. Since the section covers all proceedings, subs. (1)(c) and (d) thereof

spell out the position of a workman in proceedings before the Industrial Court. The words "(in proceedings under s. 20(3))" appearing in subs. (1)(c) and (d) thereof when they relate to a workman clearly define the right given to the workman in as far as his appearance and representation at such proceedings before the Industrial Court. He may be involved in other proceedings not related to s. 20(3) but when he is involved in proceedings relating to s. 20(3), by para. (c) of subs. (1) of s. 27, he may appear personally or where he is a member of a trade union of workmen, he may be represented by an officer or employee of the trade union of which he is a member. By para. (d) of that subsection, in such proceedings, he may be represented by an advocate only with the permission of the president or the chairman. Now that the issue before the Industrial Court concerns his appearance in a proceedings under s. 56 of the 1967 Act, paras. (c) and (d) of s. 27(1) is not applicable. In the circumstances the learned president has not committed any error when he held in the impugned award that "a counsel has no *locus standi* to represent" the applicants in a non-compliance case under s. 56(1) of the 1967 Act.

The learned author, Donald Gifford in his book entitled "*Statutory Interpretation*" has this to say at p. 3:

> The duty of the court is to interpret the language of the Act and not to legislate. The argument of inconvenience cannot prevail against the plain words of the statute.
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> The fundamental rule of statutory interpretation is that plain words must be given their plain meaning. There is no principle of interpretation that authorises the court to rewrite an enactment, the wordings of which yields a plain meaning. The first and foremost consideration in the interpretation of a statute is to have regard to the words used, and where those words are clear and admit of no ambiguity then they should be given effect accordingly.

I find that the words in s. 27 of 1967 are plain and clear and admit of no ambiguity. It may appear harsh against a workman but as the learned president said in the impugned award the remedy lies in an amending act.

Now, I come to deal with those cases cited by the learned counsel for the applicants. First is the case of *Doresamy v. Public Services Commission* [1971] 2 MLJ 127. That case concerns a disciplinary matter under certain regulations. The regulations do not expressly exclude legal representation. It was held that where a statutory right of appeal is given and the regulations are silent on the right to the assistance of counsel, the aggrieved person cannot be deprived of such right of assistance. That case can easily be distinguished from the present case because by the qualified right to legal representation only be given to a workman under s. 27(1)(d) in a proceedings under s. 20(3) for unlawful dismissal, it follows that in other proceedings no such right is so given. If

otherwise, why for such a serious matter as in instance of unlawful dismissal, the right to representation is being curbed or qualified by s. 27 of the 1967 Act?

In *Federal Hotel Sdn Bhd v. National Union of Hotel, Bar & Restaurant Workers* [1983] 1 MLJ 175 the employer could not comply with the term of the award and wrote to the Industrial Court with proposal to pay by instalments. The court regarded that as a complaint under s. 56(1) of the 1967 Act. Eventually it made a second award making the employer liable to more than the original award. At the hearing culminating in this second award, there was a change of solicitors for the employer and as there was no warrant to act, the employer was without legal representation for the proceedings. The employer applied to the High Court to quash this second award on the ground that the Industrial Court was *functus officio* and that the second award was made in breach of natural justice. The High Court dismissed the substantive motion for certiorari on ground of jurisdiction under s. 33(2) of the 1967 Act relating to the variation of the terms of an award for purpose solely of removing ambiguity or uncertainty. The employer appealed to the Federal Court against the decision of the learned judge of the High Court. The Federal Court allowed the appeal and granted certiorari to quash the second award of the Industrial Court holding *inter alia,* that neither s. 33(2) nor s. 56 of the Act applies in the matter. On the issue of legal representative for the employer, the Federal Court held that it was clearly contrary to natural justice in the case to allow one side to be legally represented but to refuse the same right to the other. So, it is clear from the decision of the Federal Court that the issue of representation by solicitors is not at all related to a matter under s. 56 of the 1967 Act as this matter before me now is. It is a matter related to the issue under s. 20(3) on which the first award was made and by the second award the Industrial Court being *functus officio* acted erroneously to vary it. To that extent, that case is distinguished.

The two cases of *Pustaka Delta Pelajaran Sdn Bhd v. Looi Beng Chong* [1997] 1 ILR 620 and *Cellular Communcations Network (M) Sdn Bhd v. Steven Phua Siaw Yong* [1997] 1 ILR 845 of the Industrial Court cannot in any way affect the decision of the Industrial Court in the present case. The fact that there was no similar objection raised as to the legal representation for the workmen there, would not detract from the intent of s. 27 of the 1967 Act which is clear and unambiguous in its language.

In his final reply, the learned counsel for the applicants urges upon me to invoke the principle in *Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 to make an order directing the first respondent to comply with the original Award No. 76 of 1989 on account

of the long delay in the disposal of matter before the Industrial Court relating to it. Secondly, it is also urged that I should include an order for the payment of interest from the date of such award being made by the Industrial Court. I see no merit in the submissions because the issue before me concerns the decision of the Industrial Court on a preliminary issue. The complaint by the deceased workman which was the substantive matter before the Industrial Court never went off the ground pending the disposal of the issue at hand.

In the circumstances, on the issue at hand, this application by the applicants must fail. The application is dismissed with costs.